

1 WO
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 United States of America,

Plaintiff,

No. CR11-1939-PHX DGC

10
11 v.
12 Ronald Uthe,

13 Defendant.

14 ORDER

15 Defendant Ronald Uthe has been indicted for several federal firearms violations.
16 On October 19, 2011, Magistrate Judge Michelle Burns issued an order releasing
17 Defendant pretrial subject to a number of specific conditions. Doc. 11. On
18 February 15, 2012, the government filed a petition to revoke Defendant's pretrial release.
19 Doc. 25. An amended petition was filed on February 23, 2012. Doc. 29. The amended
20 petition alleged that Defendant violated the pretrial release order by possessing at his
21 residence five guns, including a machine gun, and seven silencers. Judge Burns' order
22 had permitted Defendant to possess only one firearm to be used for the opening and
closing of his business. Doc. 11.

23 Magistrate Judge Steven Logan held a hearing on the amended petition on
24 February 28, 2012. Doc. 33. Witnesses testified and exhibits were received. *Id.* Judge
25 Logan found by clear and convincing evidence that Defendant was a danger to the
26 community and should be detained, and that no condition or combination of conditions
27 would reasonably assure the safety of the community. Doc. 37.

28 More than four months later, Defendant filed a motion asking this Court to review

1 Judge Logan's decision. Doc. 45. The motion is untimely. Federal Rule of Criminal
2 Procedure 59(a) provides that "[a] party may serve and file objections to [a magistrate
3 judge's] order within 14 days after being served with a copy of a written order or after the
4 oral order is stated on the record, or at some other time the court sets." The rule further
5 provides that "[f]ailure to object in accordance with this rule waives a party's right to
6 review." Fed. R. Crim. P. 59(a).

7 Judge Logan stated his decision on the record at the February 28, 2012 hearing.
8 His written order was transmitted electronically to defense counsel the next day. No
9 court established any different time for filing a motion to review the decision. As a
10 result, Defendant's motion should have been filed by March 14, 2012, and was months
11 late when filed on July 3, 2012. Because the motion was filed well after the Rule 59(a)
12 deadline, Defendant has waived his right to review.

13 Citing a prior decision of this Court, Defendant notes that district judges retain
14 discretion to review the decisions of magistrate judges even after the Rule 59 time for
15 review has expired. *See United States v. Tooze*, 236 F.R.D. 442, 445-46 (D. Ariz. 2006).
16 If the time limit set in Rule 59(a) is to have any meaning, however, district judges must
17 exercise this discretion sparingly. In *Thomas v. Arn*, 474 U.S. 140, 155 (1985), the
18 Supreme Court approved the adoption of waiver rules on matters for which magistrate
19 judges make decisions or recommendations. In promulgating the time deadline and
20 waiver provision of Rule 59(a), the Advisory Committee on the Federal Rules of
21 Criminal Procedure stated its belief "that the waiver provisions will enhance the ability of
22 a district court to review a magistrate judge's decision or recommendation by requiring a
23 party to promptly file an objection to that part of the decision or recommendation at
24 issue." Advisory Committee Notes to Rule 59 (2005 Adoption).

25 The Court believes that requiring prompt review of magistrate judge decisions will
26 enhance the efficiency of the criminal justice system and the ability of district courts to
27 address issues in an accurate and cost-effective manner. In this day of growing case
28 loads, the efficiency of the criminal justice system is critically important. Too free

1 exercise of discretionary review powers would eliminate the benefits intended in
2 Rule 59(a).

3 Defendant Uthe does not argue that his months-long delay in seeking review of
4 Judge Logan's decision was based on the discovery of new evidence or was justified for
5 some other reasons. The Court concludes, in its discretion, that the waiver provision of
6 Rule 59(a) should have effect in this case. Defendant's motion for review will therefore
7 be denied as untimely.

8 **IT IS ORDERED** that Defendant Uthe's motion for review (Doc. 45) is denied.
9 Excludable delay pursuant to U.S.C. § 18:3161(h)(1)(D) is found to run from 7/3/2012.

10 Dated this 19th day of July, 2012.

11
12 *David G. Campbell*
13

14 _____
15 David G. Campbell
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28